

BEFORE THE BOARD OF PSYCHOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC  
amendment of ARM 8.52.624, ) HEARING ON PROPOSED  
8.52.801, 8.52.802, 8.52.803, ) AMENDMENT AND ADOPTION  
8.52.804 and 8.52.805, to clarify )  
record retention and defined )  
professional relationships of )  
psychologists, and the proposed )  
adoption of NEW RULE I relating to )  
foreign-educated psychologists )

TO: All Concerned Persons

1. On April 15, 2004, at 9:30 a.m., a public hearing will be held in room 471 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., on April 9, 2004 to advise us of the nature of the accommodation you need. Please contact Cheryl Brandt, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibspsy@state.mt.us.

3. The rules proposed to be amended are as follows:  
(deleted matter stricken, new matter underlined)

8.52.624 DEFINITION OF ONE YEAR'S RESIDENCY DEFINITIONS  
As used in this chapter, the following definitions apply:

(1) remains the same, but is renumbered (2).

(1) "Defined professional relationship" means a relationship in which a licensee or license applicant provides diagnostic, assessment and/or therapeutic services to a client. A defined professional relationship shall be established in a context where services are provided:

(a) in person and face-to-face; or

(b) transmitted via electronic or related methods. If provided under this subsection, the context must also be:

(i) two-way;

(ii) interactive;

(iii) real-time;

(iv) simultaneous;

(v) continuous; and

(vi) providing for both audio and visual interaction.

AUTH: 37-1-131, 37-17-202, MCA  
IMP: 37-1-131, ~~37-17-302~~, 37-17-101, MCA

REASON: The Board has determined that it is reasonable and necessary to delineate the conditions under which licensed Montana psychologists may provide diagnostic, assessment, and/or therapeutic services using electronic means. The practice of psychology relies extensively on direct observation of patient behavior. If these types of services are to be offered via electronic or other similar methods, protection of the public must be addressed by setting forth parameters for establishing the initial appropriate psychologist-patient relationship. The Board has received numerous inquiries seeking clarification on the guidelines for the appropriate provision of psychological services via the Internet, audio-visual teleconferencing, email, etc. The Board convened a working group consisting of Board representatives, licensees and members of the Montana Psychological Association to research and address this issue. This proposed rule amendment is the culmination of several meetings of the working group.

This rule change corrects an erroneous implementation cite. The proposed rule amendment would affect all licensed psychologists in Montana who practice using electronic means.

8.52.801 REPRESENTATION OF SELF AND SERVICES

(1) through (3)(d) remain the same.

(e) shall, when providing advice or comment ~~by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, computer or other electronically transmitted media, or other media,~~ when a defined professional relationship does not exist, take reasonable precautions to ensure that the statements are based on appropriate psychological literature and practice. Furthermore, the psychologist shall take reasonable precautions to ensure that the recipient of ~~the~~ such information does not infer that a defined professional relationship has been established with the psychologist personally;

(f) and (g) remain the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA  
IMP: 37-1-131, 37-1-316, ~~37-1-319~~, 37-17-101, MCA

REASON: It is both reasonable and necessary to clarify that when providing advice or comment in the public arena, and not pursuant to a defined professional relationship, Montana licensed psychologists must take precautions to ensure that recipients of the information do not infer that a defined professional relationship has been established. It is necessary to amend this rule to comport with the new definition of "defined professional relationship" and its application, and to correct an erroneous implementation cite.

This proposed rule amendment would affect all Montana licensed psychologists.

8.52.802 PRACTICE OF PSYCHOLOGY (1) and (1)(a) remain the same.

(b) shall not provide ~~diagnostic, therapeutic, teaching, research, supervisory, consultative or other psychological services, except in the context of a defined professional or scientific relationship or role based on their~~ any services in the practice of psychology except those services within the scope of the licensee's education, training, supervised experience or appropriate professional experience;

(c) remains the same.

(2) In regard to disclosure and obligation to report, a licensee:

(a) shall disclose fees and confidentiality prior to initiating the defined professional relationship with clients, except in the case of a clinical emergency. Upon initiating the defined professional relationship there ~~will~~ must be a discussion of the nature and anticipated course of contracted services, limitations of confidentiality and modalities of treatment, and mandated reporting situations. When services rendered involve more than one interested party, the psychologist shall clarify the dimensions of confidentiality and professional responsibility to all participating parties;

(b) who has substantial reason to believe that there has been a violation of the statutes or rules of the board, shall so inform the board in writing. However, when the information regarding such violation is obtained in a defined professional relationship with a client, the psychologist shall report it only with the written permission of the client;

(c) through (3) remain the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, ~~37-1-319~~, 37-17-101, MCA

REASON: The Board determined there is reasonable necessity to amend this rule to clarify that a psychologist shall provide only those services within the practice of psychology for which the psychologist has the appropriate experience and training. This amendment also standardizes the references to a "defined professional relationship" throughout the rule to comport with the new definition proposed in this notice. It is also necessary to add the requirement that modalities of treatment must be discussed during the initiation of a defined professional relationship to ensure the protection of the public from the outset of this type of relationship. The proposed rule change will correct an erroneous implementation cite. This rule will affect all licensed psychologists in Montana.

8.52.803 PROFESSIONAL RESPONSIBILITY (1) through (1)(c) remain the same.

(d) shall take reasonable steps to avoid harming the psychologist's clients, ~~research participants, students and others~~ with whom there is a defined professional relationship, and to minimize harm where it is foreseeable and unavoidable;

(e) through (g) remain the same.

(h) shall continue the defined professional relationship with the client until a relationship is established with the professional person to whom the client is referred or until the relationship has been terminated by mutual agreement. In situations where referral, consultation or other changes in the conditions of the treatment are indicated, and the client refuses referral, the psychologist shall carefully weigh the possible harm to the client, the psychologist and the psychologist's profession that might ensue from continuing the relationship.

(2) and (2)(a) remain the same.

(b) who performs interventions or administers, scores, interprets or uses assessment techniques shall be familiar with the reliability, validation and related standardization or outcome studies of, and proper applications and uses of, the techniques they use; and

(i) shall recognize limits to the certainty with which diagnoses, ~~judgements~~ judgments or predictions can be made about individuals;

(ii) through (3) remain the same.

(4) In regard to the therapeutic relationship, a licensee:

(a) shall provide psychological services for the purpose of diagnosis, assessment or treatment ~~or personalized advice~~ only in the context of a defined professional relationship, ~~and shall not be given by means of public lectures or demonstrations, newspaper or magazine articles, radio or television programs, mail or similar media. Psychologists shall perform evaluations, diagnostic services or interventions only within the context of a defined professional relationship;~~

(b) through (b)(iii) remain the same.

(c) shall not undertake or continue a defined professional relationship with a client when the psychologist is, or could reasonably be expected to be impaired due to mental, emotional, physiologic, pharmacologic or substance abuse conditions. If such a condition develops after a defined professional relationship has been initiated, the psychologist shall terminate the relationship in an appropriate manner, shall notify the client in writing of the termination and shall assist the client in obtaining services from another professional;

(d) through (7) remain the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, ~~37-1-319~~, 37-17-101, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that psychological services offered for the purposes

of diagnosis, assessment, or treatment must be provided within the context of a defined professional relationship. The proposed amendment also clarifies the requirements for professional responsibility that accompany this type of relationship. This amendment standardizes the references to "defined professional relationships" throughout the rule, per the proposed new definition, and corrects an erroneous implementation cite. This rule will affect all Montana licensed psychologists.

8.52.804 RELATIONSHIPS (1) In regard to multiple relationships, a licensee:

(a) shall not undertake or continue a defined professional relationship with a client when the objectivity of the licensee is impaired because of present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative or legal relationship with the client or a relevant person directly associated with or related to the client.

(2) through (2)(c)(vi) remain the same.

(vii) any statements or actions made by the licensee during the defined professional relationship suggesting or inviting the possibility of post termination sexual or romantic relationship with the client.

(3) remains the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, ~~37-1-319~~, 37-17-101, MCA

REASON: The Board finds reasonable necessity to amend this rule to standardize the references to a "defined professional relationship" throughout the rule in accordance with the proposed new definition, and to correct an erroneous implementation cite. This change will affect all licensed psychologists in Montana.

8.52.805 PRIVILEGED INFORMATION AND RECORDS (1) through (1)(b)(v) remain the same.

(vi) a copy of all test or other evaluative reports prepared as part of the defined professional relationship.

(c) and (d) remain the same.

(e) shall continue to treat as confidential information regarding a client after the defined professional relationship between the psychologist and the client has ceased.

(2) Licensees shall maintain and not destroy patient records:

(a) for a period of seven years after the patient reaches the age of 18, for patients who are minors; and

(b) for a period of seven years after the last professional patient contact, including a release of records, for patients who are adults.

AUTH: 37-1-131, 37-1-319, ~~and~~ 37-17-202, MCA

IMP: 37-1-131, 37-1-316 ~~and 37-1-319~~, 37-17-101, MCA

REASON: The Board determined it is reasonable and necessary to amend this rule to establish a requirement for retention of patient records applicable to all licensed psychologists. The Board has received inquiries as to the length of time that licensees are required to maintain patient records. The Board researched various entity requirements for record retention and, for the Board's purposes of psychologist licensure and regulation for the protection of the public, proposes the seven-year requirement. The Board determined that having a clear record retention requirement for licensees may also aid in obtaining information during investigation, contested cases and litigation. Licensees should be aware that other entities, such as specialty credentialing groups, might have different, independent record retention requirements. This rule change also standardizes the references to a "defined professional relationship" throughout the rule and corrects an erroneous implementation cite.

4. The board proposes to adopt NEW RULE I as follows:

NEW RULE I LICENSURE OF FOREIGN-TRAINED PSYCHOLOGISTS

(1) Foreign-trained applicants shall fulfill all requirements for licensure as stated in this chapter.

(2) In addition, foreign-trained applicants shall provide documentation of receipt of a doctoral degree in clinical psychology with educational standards substantially equivalent to those established by a graduate program approved by the American psychological association, as evidenced by the evaluation of educational credentials by the national register of health service providers in psychology, inc., 1120 G Street NW, Suite 330, Washington, DC, 20005, [www.nationalregister.org](http://www.nationalregister.org). A fee is required by this service and shall be paid by the applicant. Final approval of the substantial equivalence of the educational standards lies with the board.

(3) Foreign-trained applicants shall provide proof of either:

(a) successful completion of a college undergraduate program taught in the English language. Official notice of such completion shall be submitted to the board directly from the registrar, dean or provost of the undergraduate institution; or

(b) for applicants who received their undergraduate degree from a program not taught in English, evidence of successful completion of and a minimum score of level 8 on the international English language testing system (IELTS) English proficiency examination.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, 37-17-309, MCA

REASON: The Board proposes to adopt NEW RULE I to clarify the requirements for licensure of foreign-trained psychologists.

Pursuant to 37-17-309, MCA, the Board is required to approve an agency to perform evaluation of the education of foreign-trained applicants. The Board convened a subcommittee to evaluate various credentialing entities and now proposes that the National Register of Health Service Providers in Psychology be designated to evaluate the education of foreign-trained applicants. The Board also determined a reasonable necessity to establish standards for minimum competency in the English language to further ensure the safety of members of the public who use the services of foreign-trained psychologists in Montana. The new rule will affect all foreign-trained psychologist applicants.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibspsy@state.mt.us](mailto:dlibspsy@state.mt.us), and must be received no later than 5:00 p.m., April 23, 2004.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Psychologists rule notice section. The Department strives to make the electronic copy of this notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

7. The Board of Psychologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Psychologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibspsy@state.mt.us](mailto:dlibspsy@state.mt.us) or may be made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice requirements of 2-4-302,

MCA, apply and have been fulfilled.

9. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS  
PAUL SILVERMAN, PhD, CHAIR

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State March 15, 2004.